

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 05 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

THE CONVERSE PROFESSIONAL
GROUP, INC., a California corporation;
CONVERSE TESTING WEST, a
California corporation,

Plaintiff-Appellants,

v.

FEDERAL INSURANCE CO., an
Indiana corporation,

Defendant-Appellee.

No. 07-55134

D.C. CV-05-6751-AG(RCx)

MEMORANDUM*

Appeal from United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Submitted June 3, 2008**
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN, TALLMAN, Circuit Judges, and SINGLETON,^{***}
Senior District Judge

In this diversity action, Converse Professional Group (CPG) and Converse Testing West (CTW) sued Federal Insurance Company (Federal), alleging that Federal improperly denied coverage under a D&O policy for costs they incurred defending and ultimately settling a lawsuit. That lawsuit involved a claim by a union to recover from CTW unpaid fringe benefit contributions required by a bargaining agreement and master labor agreement. CPG was sued under *alter ego* theories. The district court granted summary judgment in favor of Federal. The remaining facts are known to the parties and will not be repeated.

Appellants argue that Federal had a duty to defend CPG and CTW under the D&O Policy in the union's action notwithstanding that no individual officer or director was a named defendant either in the caption or the body of the complaint. Appellants' argument is foreclosed by *Bowie v. Home Ins. Co.*, 923 F.2d 705, 708 (9th Cir. 1991) (explaining that "[t]he phrase 'duty to defend' presupposes the existence of a lawsuit against an 'insured,' requiring a defense under the policy. Here, that supposition simply does not apply.").

AFFIRMED.

^{***} Honorable James K. Singleton, Jr., Senior District Judge, District of Alaska, sitting by designation